

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 15, 2006 Session

**DANIEL MUSIC GROUP, LLC v. TANASI MUSIC, LLC, ET AL.**

**Appeal from the Chancery Court for Davidson County  
No. 05-0761-II Carol L. McCoy, Chancellor**

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**No. M2005-02217-COA-R3-CV - Filed on March 30, 2007**

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This appeal involves a contractual dispute between two music publishing companies. After prior litigation in Tennessee and Pennsylvania, one of the companies filed a third law suit in the Chancery Court for Davidson County seeking damages and injunctive relief. At the plaintiff's request, the trial court set an early trial date because the parties had already conducted extensive discovery in the earlier proceedings. The trial court heard the case without a jury and awarded a judgment to the plaintiff. In this appeal, the defendant asserts that the trial court's decision to expedite the trial interfered with its opportunity to prepare and file an answer, to prepare for trial, and to request a jury. We affirm the judgment because the defendant has failed to demonstrate that it was prejudiced by the expedited trial schedule.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN, J., joined. WILLIAM C. KOCH, JR., P.J., M.S., filed a concurring opinion.

S. Ralph Gordon, Nashville, Tennessee, for the appellant, Tanasi Music, LLC.

W. Gary Blackburn, Nashville, Tennessee, for the appellee, Daniel Music Group, LLC.

**OPINION**

Two music publishing companies, Daniel Music Group, LLC ("DMG") and Tanasi Music, LLC ("Tanasi"), formed a joint venture in July 2002, the purpose of which was to acquire songwriters and promote their musical compositions. After more than two years of working together, their relationship turned sour and litigation ensued, first in Tennessee, then in Pennsylvania, and thereafter back in Tennessee.

The first civil action in this trilogy of lawsuits between the parties was filed in September, 2004, in the Chancery Court for Davidson County by Tanasi, alleging breach of contract by DMG.<sup>1</sup> Edward Arnold,<sup>2</sup> president of Tanasi, joined Tanasi as a co-plaintiff in the first action for the purpose of enjoining DMG from pursuing foreclosure on Arnold's property in Pennsylvania, which served as a guarantee to secure the obligations of Tanasi and Arnold under the contract presently at issue.<sup>3</sup>

The Chancellor issued a Temporary Restraining Order, enjoining DMG from pursuing a foreclosure action on the Pennsylvania property until the matter could be heard by the court. After the parties conducted extensive discovery and submitted memoranda in support of their competing arguments with regard to the injunctive relief, the Chancellor dissolved the restraining order and set the contract dispute for trial on the merits. The case was to be tried January 7, 2005, but Tanasi and Arnold filed a notice of voluntary dismissal of the action in the Chancery Court of Davidson County the week before trial.

After the injunction was lifted but prior to the trial of the contract dispute in the Chancery Court of Davidson County, the battleground concerning the matters at issue moved to Pennsylvania with the filing by DMG of foreclosure proceedings in Chester County, Pennsylvania. This occurred on December 27, 2004, and it effectively started the process anew. In February 2004, Tanasi answered DMG's foreclosure Complaint and filed a Counterclaim, the factual basis of which was almost identical to that of Tanasi's September 2004 complaint in Davidson County.<sup>4</sup> Thereafter, DMG moved to dismiss the Counterclaim of Tanasi and Arnold, contending the breach of contract issues raised in the Counterclaim were subject to a choice of venue clause in the contract at issue, which required disputes arising out of the contract to be commenced and maintained in Tennessee. After considering the issue of venue, the Pennsylvania court agreed with DMG and dismissed the Counterclaims of Tanasi and Arnold, without prejudice.

On March 24, 2005, the third civil action regarding the matters at issue was commenced with the filing of this action by DMG. In its Complaint, DMG asserted that Tanasi breached the contract that was the subject of the two previous actions, for which DMG requested monetary damages. In addition thereto, DMG sought to enjoin Arnold from pursuing claims arising from the contract in any other jurisdiction. Tanasi and Arnold responded to DMG's Complaint on May 3, 2005, with a

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<sup>1</sup>The contract contained a venue clause which provided that disputes arising out of the contract would be heard in the state or federal courts of Nashville, Davidson County, Tennessee.

<sup>2</sup>The co-plaintiff, Edward Arnold, is not to be confused with legendary singer and beloved Tennessean, Eddy Arnold. The record does not suggest any relationship, business or familial, between Mr. Edward Arnold, president of Tanasi, and the entertainer Eddy Arnold.

<sup>3</sup>Mr. Arnold's residence in Pennsylvania served to guarantee that Tanasi would make advances of funds in accordance with the contract. Originally, property in Nashville was provided for collateral, but Arnold's Pennsylvania property was later substituted.

<sup>4</sup>Both parties filed additional pleadings and motions in the Pennsylvania court; however, the content of said filings are not relevant to the present appeal.

Motion to Dismiss the second Count of the Complaint, which only pertained to the request for injunctive relief.<sup>5</sup> One week later, DMG filed a Motion for Temporary Injunction and to Advance to Trial Upon the Merits and for Entry of a Final Judgment. On May 23, 2005, the Chancellor set the motions for hearing on June 2, and advanced the case for trial upon the merits to June 3, 2005.<sup>6</sup> Following the June 2 hearing on the parties' respective motions, the Chancellor denied Tanasi's Motion to Dismiss and DMG's request for injunctive relief. The Chancellor additionally found that the parties had engaged in extensive discovery in preparation for the previous trial setting six months earlier and concluded that such discovery afforded the parties a reasonable opportunity to be prepared for a trial. Based upon these findings, the Chancellor instructed the parties to return the following day, on June 3, 2005, for a bench trial.

The bench trial commenced on June 3; however, at the beginning of the bench trial, Tanasi moved for a continuance, contending the Chancellor and not afforded Tanasi sufficient time following the denial of its Motion to Dismiss to file an Answer.<sup>7</sup> The Chancellor overruled Tanasi's motion for a continuance and the trial proceeded. At the conclusion of the bench trial, the Chancellor ruled in favor of DMG from which order Tanasi appeals.

The issues on appeal are limited to the expedited manner in which the case went to trial. Specifically, Tanasi contends the Chancellor erred in failing to allow it sufficient time to file an Answer to DMG's Complaint, to prepare for trial, and to demand a trial by jury.

#### ANALYSIS

The matters at issue pertain to the concept of due process of law, which requires in part that litigants be provided reasonable notice of the trial date and an adequate time to prepare for trial. *Roden v. McBee*, C.A. No. 879, 1989 WL 128283, at \*2 (Tenn. Ct. App. Oct. 30, 1989). As the United States Supreme Court has stated, reasonable notice is a fundamental requirement of due process. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In furtherance thereof, the Supreme Court of Tennessee has consistently held that notice is a basic protection arising from due process. *See Keisling v. Keisling*, 92 S.W.3d 374, 377 (Tenn. 2002); *State v. Pearson*, 858 S.W.2d 879, 884 (Tenn. 1993).

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<sup>5</sup>In their Motion to Dismiss, Tanasi and Mr. Arnold only challenged DMG's request for injunctive relief and not DMG's breach of contract claim.

<sup>6</sup>Originally, on May 12, 2005, the court issued an order stating that the hearing on the motion for injunctive relief was to be heard contemporaneously with a trial on the merits on June 2. Apparently, the court was not aware of the pending Motion to Dismiss. As a result of learning of the outstanding motion, the court altered its order on May 23, 2005, to set a hearing for both the Motion to Dismiss and the Motion for Temporary Injunction and to Advance to Trial Upon the Merits, and, if necessary, to hold a trial after the conclusion of the June 2 hearing on the motions.

<sup>7</sup>At the commencement of the bench trial on June 3, the parties advised the court that Arnold had filed for bankruptcy in Pennsylvania and therefore, the proceedings with regard to Arnold were automatically stayed.

The underlying purpose of due process, specifically notice, is to “notify the individual in advance in order to allow adequate preparation and reduce surprise.” *Sanford v. Tennessee Dept. of Env't & Conservation*, 992 S.W.2d 410, 415 (Tenn Ct. App. 1998). Accordingly, requirement that a litigant be afforded adequate time to prepare for trial is inextricably linked to the notice requirement. *Roden v. McBee*, 1989 WL 128283, at \*2-3.

In the Complaint at issue, DMG sought injunctive relief and compensatory damages for breach of the contract that had been at the core of the dispute in the two previous civil actions between the parties. By order entered May 12, the Chancellor advanced the trial on the merits, setting it to be heard on June 2, contemporaneous with DMG’s application for injunctive relief and Tanasi’s Motion to Dismiss.

Tanasi relies on Tennessee Rule of Civil Procedure 12.01 to contend that it should have been afforded at least fifteen days following the denial of its Motion to Dismiss to file its Answer to the Complaint, in which it could have demanded a jury trial. Tanasi’s reliance on Rule 12.01 is misplaced for two reasons. One, Tanasi fails to recognize the significance of the qualifying clause in Rule 12.01 which reads, “*unless a different time is fixed by order of the court:*” The pertinent portion of Rule 12.01 states:

A defendant shall serve an answer within 30 days after the service of the summons and complaint upon the defendant. . . .

The service of a motion permitted under this rule alters these periods of time as follows, *unless a different time is fixed by order of the court:* (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement.

Tenn. R. Civ. P. 12.01 (emphasis added).

The second reason Tanasi’s reliance on Tenn. R. Civ. P. 12.01 is misplaced is that Tanasi fails to recognize the trial court’s prerogative afforded by Tenn. R. Civ. P. 65.04(7), which permits the court to advance the trial of the action on the merits and to consolidate the trial on the merits with the hearing of the application for injunctive relief. Tenn. R. Civ. P. 65.04(7) expressly affords the trial court the prerogative of advancing the trial on the merits of matters that pertain to applications for injunctive relief. The Rule states in pertinent part, “Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.” Tenn. R. Civ. P. 65.04(7).

Tanasi contends it was denied the right to a trial by jury.<sup>8</sup> We have concluded Tanasi was not denied the right; to the contrary, Tanasi waived the right by not making a timely demand for a jury trial. By May 12, 2005, Tanasi was on notice that a trial on the merits would be conducted, if necessary, immediately following the hearing Tanasi's Motion to Dismiss on June 2, 2005. As a consequence, Tanasi had twenty days to file its Answer to the Complaint in which it could have demanded a trial by jury, or to make a demand for a jury trial independent of its Answer. For reasons not explained by the record, Tanasi did not file an Answer or independently demand a jury. Accordingly, we conclude that Tanasi waived the right to do so.

Tanasi also contends it was prejudiced by not being afforded more time to prepare for trial.<sup>9</sup> We find this contention without merit. This was the third of three civil actions between the parties that pertained to the same contract and same issues. Moreover, the first of the three actions had been pending in the Chancery Court of Davidson County, discovery had been conducted by Tanasi and Tanasi had represented to the court in the fall of 2004 that the case was ready to be tried when it agreed to try the case on the merits.<sup>10</sup> In furtherance of this point, the Chancellor took note of the fact that the issues raised by Tanasi in the first civil action filed in Chancery Court were substantially the same issues that were before the court, and therefore, that further discovery was not necessary. As the Chancery explained:

[G]iven the proceedings that were conducted in Tennessee in the fall of 2004, including the depositions of the parties and the exchange of documents, the submission of Affidavits and arguments, and the entire record in this cause, the parties have had adequate discovery in order fully and fairly to be heard on the merits on June 3, 2005.

Furthermore, with the exception that an adverse judgement resulted, Tanasi has failed to establish any prejudice that it suffered by being required to go to trial on June 3, 2005. "A final judgment from which relief is available . . . shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process." Tenn. R. App. P. 36(b).

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<sup>8</sup>Whether the issues presented afforded Tanasi the right to a jury trial are disputed.

<sup>9</sup>Tanasi also relies on *Roden v. McBee*, 1989 WL 128283, at \*1 to contend that it was entitled to additional time following the hearing on its motion to dismiss before the trial on the merits. We, however, find the facts distinguishable in that McBee had not received advance notice that the case would be tried immediately following the hearing on McBee's motion to set aside a default judgment. The significant difference in the two cases is that McBee was not aware that the court intended to hold a trial immediately after the hearing on the motion if McBee's motion to set aside the default judgment was successful.

<sup>10</sup>"When a case is set by agreement or when a case is set by motion without an objection to having it set, all counsel are certifying they are available for trial and that the case will be in all respects ready for trial on the trial date. . . ." Rule 27.03, Davidson County Local Rules of Practice.

Having considered the entire record, we are unable to conclude that an error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process.

**IN CONCLUSION**

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the appellants, Tanasi Music, LLC.

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FRANK G. CLEMENT, JR., JUDGE